IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

CRL.A.No. 1243 of 2001()

CC.62/1996 of JUDL.MAGISTRATE OF FIRST CLASS, NORTH PARAVUR

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APPELLANT: COMPLAINANT:

AMBROSE, S/O.OUSEPH,
KANNAKASSERY, ARAKKAL DESOM,
ELAMKUNNAPUZHA.

BY ADV. SRI.K.A.JALEEL
SRI.T.T.MUHAMOOD

RESPONDENTS: ACCUSED & STATE:

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1. C.K.SAJEEV, S/O.KUTTAN,
CHAKKANALIL VEEDU, KOTTUVALLYKKAD,
MOOTHAKUNNAM.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1243 of 2001

Dated this the 22nd February, 2007.

J U D G M E N T

The complainant in C.C.No.62/1996, on the file of the Judicial First Class Magistrate Court, North Parur, is the appellant. The complaint preferred by him under Section 138 of the Negotiable Instruments Act, was dismissed on the ground that he was absent on the day, when the case was taken up. Hence, the challenge of the said order, and the appeal has been preferred, on obtaining leave of this Court.

2. The learned counsel appearing for the appellant submits that summons was issued on 4.11.1996, and the case was adjourned to 31.1.1997. Though repeated summons were issued to the accused, he did not appear. Hence, warrant of arrest was issued. The appellant has produced the required papers for executing the warrant. On the appointed date, the appellant was absent. However, it is submitted by the counsel for the appellant that his pleader in the court below was present, and the appellant was properly represented. The presence of the complainant was not necessary, as the proceedings would have been continued without the presence of the appellant. But the learned Magistrate has dismissed the appeal without the application of the facts and law.

3. Though service is complete in respect of the first respondent, accused, there is no representation. Hence, I heard the learned counsel appearing for the appellant in detail. Considering the facts of this case, I am inclined to give an opportunity to the parties to adduce evidence.

4. Hence, I set aside the impugned judgment, dated 5.5.1998, and restore C.C.No.62/1996, to the file of the Judicial First Class Magistrate Court, North Parur.

5. The appellant shall appear before the court below on 20.3.2007.

6. As the respondent is not before me, despite receipt of notice, the learned Magistrate shall take coercive steps to get his presence. This case being very old, the Magistrate shall give priority in disposal of the matter, and it shall be disposed of, in any case, within three months from the date of production/appearance of the accused.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.